

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of)	
)	PP Docket No. 93-253
Implementation of Section 309 (j))	
of the Communications Act)	
)	
Competitive Bidding)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AMERITECH

Ameritech¹ respectfully submits these Comments on the Commission's Notice of Proposed Rule Making regarding the implementation of competitive bidding for radio spectrum ("NPRM").

I. GENERAL COMMENTS

Ameritech's Comments are based upon one main principle: the rules as finally adopted must permit participants to make rational, informed decisions regarding their participation in the auction process. Nothing less than this will fulfill the Commission's goal of bringing advanced, innovative services to the public in the most efficient, rapid manner possible. As noted in the enabling legislation for this NPRM, maximization of federal revenue resulting from spectrum auctions should not override the timely, efficient delivery of new services to the public.²

¹"Ameritech" includes Ameritech Mobile Communications, Inc., as well as the Ameritech operating companies.

²The first-stated objective in the legislation which this proceeding implements is "the development and rapid deployment of new technologies, products, and services for the benefit of the public...". Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002 (a), 107 Stat. 312, 392 (1993). ("Budget Act"). A later section of the Act specifically prohibits the Commission from basing "a finding of public interest, convenience, and necessity on the expectation of Federal revenues ...". Budget Act.

II. BIDDER QUALIFICATIONS: THE PCS/CELLULAR EXCLUSION RULE SHOULD BE APPLIED AFTER AWARD OF A LICENSE

The NPRM seeks comment on the Commission's proposal that each bidder be required to submit both a "short-form" and a "long form" application, with the long form to be reviewed only following the award of a license to the successful bidder in a given auction.³ In order to implement the Commission's rules regarding eligibility of cellular operators to hold PCS licenses in the geographic area(s) for which they hold cellular licenses⁴ it is imperative that parties currently holding cellular licenses be permitted to participate in the bidding process with an understanding that they will, if successful in acquiring a PCS license, be permitted a reasonable time (e.g., 6 months) after the award to meet the associated eligibility rules.

In other words, a cellular operator must be permitted to state in its long form application that, if successful, it will act to comply with the 20% cellular ownership requirement within a set time following the award of a PCS license. This is the only means by which cellular operators, whom the Commission has recognized will bring expertise, economies of scope, and existing infrastructures to the emerging PCS marketplace⁵, can make rational decisions as to their participation in the auctions process. Requiring a going cellular business to reduce or terminate its investment in that aspect of the wireless marketplace before being assured a PCS license would work to undermine economically-rational bidding decisions by this important group of service providers.

III. THE PROPOSED "INTERMEDIATE LINKS" TEST IS UNWORKABLE

The NPRM tentatively proposes that "licenses used ... as an intermediate

³NPRM, at 31-33 (para. 96-111).

⁴GEN Docket 90-314, Second Report and Order, adopted September 23, 1993 ("Second Report and Order"), at 46-48 (paragraph 106-111).

⁵Second Report and Order, at 45 (para. 104).

link in the provision of a continuous, end-to-end service to a subscriber would be subject to competitive bidding," regardless of the location of the spectrum. This proposal is described as "administratively efficient".⁶

Any efficiencies gained from such a proposal would be quickly overwhelmed by the difficulties encountered in enforcing it. As discussed below, the test as proposed is unworkable in both practice and effect. First, since the Commission requires that only spectrum "subject to mutually exclusive applications" should be auctioned, it is likely that competing bidders will use the spectrum they seek for different purposes. For example, sharing spectrum in the 1.9-2.1 GHz band between PCS providers and fixed microwave users is clearly contemplated by the Commission. In fact, this was the main reason for the transition rules recently promulgated in Docket 92-9.⁷ The paradox resulting from applying the proposed "intermediate link" test in this context is obvious. A fixed microwave user may or may not have engineered its network to employ a particular microwave hop as an "intermediate link" in an end-to-end subscriber service. Further, the proposed use may change over time with the growth or evolution of the network within which the link is used. Usage of a particular link may also be mixed between "end-to-end" and other types of services. The answer to the question of whether this particular license is an "intermediate link" is thus unclear, and may even change over time.

From an economic efficiency perspective, the proposed rule may also have disruptive effects upon planning and engineering by bidding parties. Current local exchange carrier (LEC) tariffs for services which may use radio spectrum at some point within their evolving network configurations do not generally include cost elements for use of that spectrum. Since the proposed "intermediate links" rule would impose additional costs on the providers of such services, it would be

⁶NPRM, at 10 (paras. 28-9).

⁷ET Docket 92-9: Redevelopment of Spectrum, Third Report and Order, adopted July 15, 1993.

necessary to revise LEC tariffs and the underlying cost work (perhaps repeatedly during the life of the service in question) to reflect these new costs. Further, the costs and operation of the network involved in providing an end-to-end service may be impacted because of shifts in traffic patterns and levels that would result from those price changes. This result is clearly undesirable in both its operational impact and its potential for distortion of price competition.

IV. THE COMBINATORIAL BIDDING PROPOSAL SHOULD BE EXPANDED TO PERMIT GROUP BIDDING ON FEWER THAN ALL LICENSES WITHIN A GEOGRAPHIC AREA

The proposed rules include provision for "combinatorial bidding" procedures which would permit participants to submit sealed bids for groups of licenses which "are likely to have more value as a package than individually".⁸ In applying this concept to PCS, the Commission proposes to "accept sealed bids for all 51 MTA licenses [in a block] as a group". Similarly, the NPRM proposes to "accept both sealed bids for all BTA licenses within each MTA and conduct oral auctions sequentially for individual BTA licenses."⁹

The proposed arrangement ignores the fact that the value of a particular grouping of fewer than all licenses within a larger licensing area may be substantially higher to a particular bidding entity than the sum of the individual licenses, or of a license for the entire larger area as a unit. As we have seen in the cellular marketplace, the natural consolidation of licenses is driven by complex economic and demographic factors far beyond the mere accident of geography. Not all contiguous geographic areas are necessarily served by integrated infrastructures which have been optimized to serve those areas as a grouping. Service providers' deployment strategies are driven by many more factors than simple area coverage calculations. If a bidder were permitted to tailor a bid so as to take full advantage of

⁸NPRM, at 18-20 (para. 57-62).

⁹NPRM, at 42 (para. 123).

its expected traffic patterns, existing infrastructure, or market configuration, it might well offer a higher price for its chosen coverage areas than if it were forced to bid, on a sealed basis, for a larger geographic area instead.

Thus, the Commission should consider permitting sealed bids for aggregated licensing areas (e.g., a group of contiguous BTA's) covering less than an entire larger unit (e.g., an MTA).¹⁰ While the administrative efficiencies of permitting such bidding combinations must be carefully assessed, the economic rationality which would result from permitting such combinatorial bidding patterns should not be discounted.

Respectfully submitted,

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¹⁰The same concept could be adapted to apply smaller-size licensing areas, should the Commission elect to implement them at some future point; the PCS Rules acknowledged that "the majority of the parties express support for MSA/RSAs as the definition of PCS service areas." Second Report and Order, at 33 (para. 73).